

AN ACT TO AMEND CHAPTER 29, TITLE 25 OF THE DELAWARE CODE RELATING TO LIENS OF THE STATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 2901, Title 25 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2901. Lien of taxes and other charges; Notice of Lien.

(a)(1) Except as otherwise provided, "lien" or "liens" as used in this section shall arise whenever the following charges, as defined in this section, are levied or imposed by the State or any political subdivision thereof (including an administrative agency of the State, the Levy Court or county council of any county, any united, consolidated or incorporated school district, or any incorporated town or city in this State) and such charges become due:

- a. Real property taxes, including penalty and interest thereon;
- b. School taxes, including taxes for a vocational-technical high school district or county vocational-technical center district, including penalty and interest thereon;
- c. Service charges for maintenance or use of sewer systems, including penalty and interest thereon;
- d. Service charges for maintenance or use of water systems, including penalty and interest thereon;
- e. Service charges for garbage collection;
- f. Charges for the costs of razing or demolition of buildings done through public expenditure;
- g. Charges for duly authorized improvements or maintenance to the exteriors of buildings or property done through public expenditure;
- h. Assessments for the installation of sewer lines, water mains, sidewalks and curbing, including penalty and interest thereon;
- i. Fines imposed by any court and/or civil penalties imposed by the City of Wilmington or any department of the City of Wilmington, for local building, housing, sanitation, or animal code citations or violations. The unpaid amounts of such fines and/or civil penalties may be added to local property tax billings for the property which was the subject of said citation or violation when authorized by local ordinance. "Fines" as used in this section shall also include any civil judgment awarded to the State or any political subdivision thereof entered pursuant to § 4101 of Title 11;

j. Fees imposed by law or ordinance of any political subdivision of the State, which shall include, without limitation, municipal corporations, for registration of ownership of any vacant buildings located within the political subdivision, the imposition of which fees is final and non-appealable; ~~and~~

k. Charges for the costs of removing weeds, grasses, refuse, rubbish, trash or other waste material done through public expenditure; ~~and~~

l. Charges for the costs related to any remedy undertaken by the State for which a person is liable under Chapter 91, Title 7, or the regulations promulgated pursuant thereto, or the investigation of a release or suspected release including but not limited to performing a site assessment, tank removal or closure in place, or hydrogeologic investigation associated with a release or suspected release of a regulated substance from an underground or aboveground storage tank and the costs of taking corrective action for which a person is liable under Chapter 74 or 74A., Title 7 or the regulations promulgated pursuant thereto. The provisions of this subparagraph shall not apply to those classes of underground storage tanks set forth in § 7404(1) and (3) of Chapter 74, Title 7 or to those classes of aboveground storage tanks set forth in § 7404A. (a)(1),(3), and (4) of Chapter 74A, Title 7.

(2) "Liens" shall not include administrative costs incurred by the sheriff in the sheriff's sale process.

(3) Except as provided in paragraph (b)(1) of this section, the liens created by this subsection are levied or imposed only upon that parcel of real property against or upon which such charges have been levied or imposed. Except as provided in paragraph (b)(1) of this section, the liens created by paragraphs (a)(1)a. through (a)(1)i. and (a)(1)k. through (a)(1)l. of this section shall have preference to and priority over all other liens on such real property, including liens of a date prior in time to the attaching of the liens created by this section. The liens created by paragraph (a)(1)j. of this section shall have preference and priority with respect to all other liens on such real property as of the time such fees become final and non-appealable.

(4) Any political subdivision having the power to levy or collect any of the charges described herein shall maintain a record of all charges creating liens under this section, including the amount of the lien, the name of the chargeable, and the location of the real property against or upon which such charges have been levied or imposed. The record or information contained therein shall be available to the public upon request.

(b)(1) Upon the filing of a Notice of Lien by a political subsection in accordance with this subsection, the charges described in paragraph (a)(1) of this section shall, as of the date of filing a Notice of Lien pursuant to this subsection, be and constitute a lien upon all real property of which the chargeable was seized at the time, or at any time after such Notice of Lien has been filed in accordance with this subsection, situate in the county (including all real property situate within any incorporated town or city located within the county) in which such charges are levied or imposed.

(2) Notices of Lien shall be in the form of an affidavit, executed by an attorney for the political subdivision or by an employee of the political subdivision having custody and control over the records relating to the charges that constitute the lien, reciting that the chargeable is the owner of record of real property situate in the county (including all real property situate within any incorporated town or city located within the county) in which such charges are levied or imposed, that charges have been duly levied or imposed upon the chargeable, the types of charge as specified in paragraph (a)(1) of this section, the amount of such charges as of the date of filing the Notice of Lien and that the chargeable has failed to pay said charges despite notice by the political subdivision.

(3) A Notice of Lien for any chargeable may be filed at any time after the charges have become delinquent. Charges shall be deemed "delinquent" if they are unpaid as of the date upon which any penalty or interest shall accrue thereon in accordance with law or, in the event that there is no such date established by law, as of 90 days after the date upon which an authorized representative of the political subdivision made a demand for payment upon the chargeable.

(4) Notices of Lien shall be indexed by the name of the chargeable, in a separate index for such purposes maintained in the office of the prothonotary in each county. The index shall be maintained by the office of the prothonotary in the county in which the real property is located and shall include the name of the chargeable and the date and time the Notice of Lien was filed. A fee for filing the Notice of Lien shall be established by the Superior Court pursuant to § 8705 of Title 10 and shall be paid at the time of filing the Notice of Lien. The affidavit filed for each Notice of Lien shall be available to the public upon request. The lien created hereunder shall be a lien upon all real property owned by the chargeable at the time of filing that is situate in the county (including any incorporated town or city located within the county) in which such charges are levied or imposed, and such lien shall have priority as of the time it is filed.

(5) The political subdivision that filed any Notice of Lien may, in its sole discretion and at any time and without receiving payment of all charges owed by the chargeable, release from the lien created hereby any or all parcels of real property owned by the chargeable by filing a writing to that effect with the prothonotary, and such release shall be without prejudice to the right of the political subdivision to collect the remainder of any charges from any real property of the chargeable that is subject to the lien created under this subsection (b) and has not been so released. Any release, whether partial or complete, shall be noted in the index for Notices of Lien.

(6) A Notice of Lien shall be ineffective as of the date all charges owed by the chargeable have been paid in full, subject to paragraph (b)(7) of this section.

(7) A Notice of Lien shall be effective for a period of 3 years after the date of filing such notice, unless the political subdivision files a subsequent Continuation of Lien against the same chargeable prior to the expiration of the 3-year period and in such event the lien created by the subsequent Continuation of Lien will have priority as of the date of filing of the previous Notice of Lien. A Continuation of Lien will be effective for a period of 3 years following the initial 3-year period of the Notice of Lien and shall constitute a lien against any real property acquired by the chargeable after the filing of the Notice of Lien, and located in the county in which the

Notice of Lien was filed. No more than 1 Continuation of Lien may be filed for any 1 Notice of Lien, provided, however, that this limitation shall not preclude the later filing of a new Notice of Lien against the chargeable which shall be effective and have priority as of the date of such later filing.

(8) Upon written notice by the chargeable to the political subdivision that all charges for which the Notice of Lien was filed have been paid, the political subdivision shall enter a satisfaction of record on the Notice of Lien index.

(9) Nothing contained herein shall be deemed to affect or limit the ability of the political subdivision to collect any charge through any other legal procedure including, without limitation, proceedings pursuant to a Writ of Monition.

(10) All liens for the nonpayment of charges (including any created pursuant to § 8701 of Title 9), other than the lien upon the real property against which the charge was levied or imposed as provided in subsection (a) of this section, are hereby extinguished, provided, however, that this subsection shall not affect any lien obtained by any political subdivision prior to October 5, 1990, by any legal procedure including, without limitation, proceedings pursuant to a Writ of Monition.

SYNOPSIS

This Act amends existing law to authorize placement of a lien on real property when an owner who is responsible for contaminating the property in violation of the State's environmental laws fails to conduct a cleanup or to pay the costs of the cleanup. Under current law, in such circumstances Delaware taxpayers are often required to bear the remediation costs. By authorizing the placement of a lien on properties remediated with public funds, this Act provides a means whereby the cleanup costs may be recovered by the State upon sale of the property.